

Conference Engrossed

State of Arizona
House of Representatives
Forty-sixth Legislature
First Regular Session
2003

CHAPTER 213

HOUSE BILL 2002

AN ACT

AMENDING SECTIONS 28-364, 28-1322, 28-1323, 28-1324, 28-1325, 28-1326, 28-1462, 28-3318, 41-1713, ARIZONA REVISED STATUTES; RELATING TO DRIVING UNDER THE INFLUENCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 28-364, Arizona Revised Statutes, is amended to
3 read:

4 28-364. Powers of the director

5 A. The director may provide technical transportation planning
6 expertise to local governments when requested, coordinate local government
7 transportation planning with regional and state transportation planning and
8 guide local transportation planning to assure compliance with federal
9 requirements. The planning authority granted by this subsection does not
10 preempt planning responsibilities and decisions of local governments.

11 B. If the governor declares a state of emergency, the director may
12 contract and do all things necessary to provide emergency transportation
13 services for the residents in the affected areas whether the emergency
14 transportation is by street, rail or air.

15 C. On a determination that it is in this state's best interest, the
16 director may authorize payment for necessary relocation costs in advance of
17 work being performed if an existing facility owned by the United States must
18 be relocated or adjusted due to construction, modification or improvement of
19 a state highway. The director shall base each advance payment on an estimate
20 of cost of the proposed relocation or adjustment prepared by the federal
21 government and acceptable to the director and shall base the final
22 compensation on the actual agreed cost.

23 D. THE DIRECTOR OF THE DEPARTMENT OF TRANSPORTATION IN CONSULTATION
24 WITH THE DIRECTOR OF THE DEPARTMENT OF PUBLIC SAFETY SHALL DEVELOP PROCEDURES
25 TO EXCHANGE INFORMATION FOR ANY PURPOSE RELATED TO SECTIONS 28-1324, 28-1325,
26 28-1326, 28-1462 AND 28-3318.

27 Sec. 2. Section 28-1322, Arizona Revised Statutes, is amended to read:

28 28-1322. Preliminary breath tests; rules on approval of devices

29 A. A law enforcement officer who has reasonable suspicion to believe
30 that a person has committed a violation of section 28-1381 or 28-1382 may
31 request that the person submit to a preliminary breath test or tests before
32 an arrest.

33 B. In addition to a breath test or tests, the officer may require that
34 the person submit to further testing pursuant to section 28-1321.

35 C. The director of the department of health ~~services~~ PUBLIC SAFETY
36 shall adopt rules prescribing the approval of quantitative preliminary breath
37 testing devices.

38 Sec. 3. Section 28-1323, Arizona Revised Statutes, is amended to read:

39 28-1323. Admissibility of breath test or other records

40 A. The results of a breath test administered for the purpose of
41 determining a person's alcohol concentration are admissible as evidence in
42 any trial, action or proceeding on establishing the following foundational
43 requirements:

1 B. The director of the department of ~~health services~~ PUBLIC SAFETY may
2 revoke the permit of a person who fails to operate a breath testing device
3 according to the rules adopted by the director of the department of ~~health~~
4 ~~services~~ PUBLIC SAFETY.

5 Sec. 6. Section 28-1326, Arizona Revised Statutes, is amended to read:
6 28-1326. Blood test; rules; permits.

7 A. The director of the department of ~~health services~~ PUBLIC SAFETY
8 shall adopt rules prescribing the approval of methods for the analysis of
9 blood or other bodily substances to determine blood alcohol concentration.

10 B. The director of the department of ~~health services~~ PUBLIC SAFETY
11 shall issue a permit to an analyst who has demonstrated the ability to
12 accurately analyze blood or other bodily substances for alcohol
13 concentration.

14 C. The director of the department of ~~health services~~ PUBLIC SAFETY may
15 revoke the permit of an analyst who either:

16 1. Has demonstrated an inability to accurately analyze blood or other
17 bodily substances for alcohol concentration.

18 2. Fails to analyze blood or other bodily substances for alcohol
19 concentration according to rules adopted by the director of the department
20 of health services.

21 Sec. 7. Section 28-1462, Arizona Revised Statutes, is amended to read:
22 28-1462. Ignition interlock device certification; installer
23 bonds

24 A. After consulting with the director of the department of ~~health~~
25 ~~services~~ PUBLIC SAFETY, the assistant director for the motor vehicle division
26 of the department of transportation shall:

27 1. Certify ignition interlock devices.

28 2. Publish a list of certified ignition interlock devices that
29 includes information about the manufacturers of the devices and where the
30 devices may be ordered.

31 3. Make the list available to the courts and probation departments
32 without charge.

33 B. The assistant director shall adopt rules prescribing the
34 requirements for certification of an ignition interlock device. These rules
35 shall include:

36 1. The procedure for certification of ignition interlock devices.

37 2. Provisions to ensure the reliability of the ignition interlock
38 device over the range of motor vehicle environments.

39 3. Provisions to ensure that the ignition interlock device works
40 accurately in an unsupervised environment.

41 C. The assistant director shall not certify an ignition interlock
42 device unless all of the following are satisfied:

43 1. The device requires a deep-lung breath sample or another accurate
44 measure of the concentration by weight of alcohol in the breath.

1 1. The test was performed using a quantitative breath testing device
2 approved by the department of health services OR THE DEPARTMENT OF PUBLIC
3 SAFETY. A properly authenticated certification by the department of health
4 services OR THE DEPARTMENT OF PUBLIC SAFETY or judicial notice of department
5 of health services OR THE DEPARTMENT OF PUBLIC SAFETY rules is sufficient to
6 establish this requirement.

7 2. The operator who conducted the test possessed a valid permit issued
8 by the department of health services OR THE DEPARTMENT OF PUBLIC SAFETY to
9 operate the device used to conduct the test.

10 3. Duplicate tests were administered and the test results were within
11 0.02 alcohol concentration of each other or an operator observed the person
12 charged with the violation for twenty minutes immediately preceding the
13 administration of the test.

14 4. The operator who conducted the test followed an operational
15 checklist approved by the department of health services OR THE DEPARTMENT OF
16 PUBLIC SAFETY for the operation of the device used to conduct the test. The
17 testimony of the operator is sufficient to establish this requirement.

18 5. The device used to conduct the test was in proper operating
19 condition. Records of periodic maintenance that show that the device was in
20 proper operating condition at a time before and after the test are admissible
21 in any proceeding as prima facie evidence that the device was in proper
22 operating condition at the time of the test. The records are public records.

23 B. Compliance with subsection A of this section is the only
24 requirement for the admission in evidence of a breath test result.

25 C. Records that may be obtained or that are otherwise maintained
26 pursuant to section 28-1327 are admissible as evidence in any trial, action
27 or proceeding.

28 Sec. 4. Section 28-1324, Arizona Revised Statutes, is amended to read:

29 28-1324. Breath test rules

30 The director of the department of ~~health services~~ PUBLIC SAFETY shall
31 adopt rules prescribing methods and procedures for the administration of
32 breath tests to determine alcohol concentration. The rules shall include:

33 1. The approval of quantitative breath testing devices.

34 2. Procedures for ensuring the accuracy of results obtained from
35 approved breath testing devices.

36 3. Qualifications for persons who conduct breath tests.

37 4. Qualifications for persons who instruct others in the operation of
38 breath testing devices.

39 Sec. 5. Section 28-1325, Arizona Revised Statutes, is amended to read:

40 28-1325. Breath test operator permits

41 A. The director of the department of ~~health services~~ PUBLIC SAFETY
42 shall issue permits to operators who have received approved instruction and
43 who have demonstrated their ability to accurately operate an approved breath
44 testing device.

1 2. The device is made by a manufacturer that is covered by product
2 liability insurance.

3 3. The manufacturer of the device indemnifies this state against any
4 liability that may result from the use of the device.

5 D. The assistant director may adopt, in whole or in part, the
6 guidelines, rules, regulations, studies or independent laboratory tests
7 performed and relied on by other states or agencies or commissions of other
8 states in the certification or approval of ignition interlock devices.

9 E. Each installer of a certified ignition interlock device shall
10 submit to the department a bond in a form to be approved by the assistant
11 director and in an amount of at least twenty-five thousand dollars. The bond
12 inures to the benefit of any person who is ordered or required to equip a
13 motor vehicle with an ignition interlock device pursuant to article 3 of this
14 chapter or section 28-3319 and who suffers a loss because of either of the
15 following:

16 1. Insolvency or discontinuance of business of the installer of the
17 device.

18 2. Failure of the installer or agent of the installer to comply with
19 any rule adopted pursuant to this section.

20 F. The assistant director shall adopt a warning label design to be
21 affixed to each certified ignition interlock device on installation. The
22 label shall contain a warning that a person tampering with, circumventing or
23 otherwise misusing the ignition interlock device is guilty of a class 1
24 misdemeanor.

25 G. AFTER CONSULTATION WITH THE DIRECTOR OF THE DEPARTMENT OF PUBLIC
26 SAFETY, THE ASSISTANT DIRECTOR MAY INCLUDE INFORMATION THE ASSISTANT DIRECTOR
27 DEEMS NECESSARY IN THE NOTICE PRESCRIBED IN SECTION 28-3318 REGARDING
28 CERTIFIED IGNITION INTERLOCK DEVICES.

29 Sec. 8. Section 28-3318, Arizona Revised Statutes, is amended to read:

30 28-3318. Service of notice; definition

31 A. The department shall provide written notice to a person possessing
32 a driver license, to an unlicensed driver or to a nonresident driver of the
33 following:

34 1. A suspension, revocation, cancellation, or disqualification OR
35 CERTIFIED IGNITION INTERLOCK DEVICE LIMITATION of the license or privilege
36 to operate a motor vehicle.

37 2. Required attendance at training and education sessions.

38 B. THE DEPARTMENT MAY INCLUDE ADDITIONAL INFORMATION IN THE WRITTEN
39 NOTICE DEVELOPED IN CONSULTATION WITH THE DIRECTOR OF THE DEPARTMENT OF
40 PUBLIC SAFETY AS PRESCRIBED IN SECTION 28-1462 REGARDING CERTIFIED IGNITION
41 INTERLOCK DEVICES.

42 C. The department shall send the notice by mail to the address
43 provided to the department on the licensee's application or provided to the
44 department pursuant to section 28-448. If an address has not been provided
45 to the department as provided in this subsection, the department shall send

1 the notice to any address known to the department, including the address
2 listed on a traffic citation received by the department.

3 ~~C.~~ D. Service of the notice provided by this section is complete on
4 mailing. The department shall provide further service of notice only if the
5 department is notified of a change of address pursuant to section 28-448.

6 ~~D.~~ E. Compliance with the mailing provisions of this section
7 constitutes notice of the suspension, or revocation, CANCELLATION,
8 DISQUALIFICATION OR CERTIFIED IGNITION INTERLOCK DEVICE LIMITATION for
9 purposes of prosecution under section 28-1383, or 28-3473 OR 28-1464. The
10 state is not required to prove actual receipt of the notice or actual
11 knowledge of the suspension, or revocation, CANCELLATION, DISQUALIFICATION
12 OR CERTIFIED IGNITION INTERLOCK DEVICE LIMITATION.

13 ~~E.~~ F. Compliance with the mailing provisions of this section
14 constitutes notice of suspension or restriction for the purposes of
15 suspension or restriction under section 28-3320. The state is not required
16 to prove actual receipt of the notice or actual knowledge of the suspension
17 or restriction.

18 G. FOR THE PURPOSES OF THIS SECTION, "CERTIFIED IGNITION INTERLOCK
19 DEVICE" HAS THE SAME MEANING PRESCRIBED IN SECTION 28-1301.

20 Sec. 9. Section 41-1713, Arizona Revised Statutes, is amended to read:
21 41-1713. Powers and duties of director; authentication of
22 records

23 A. The director of the department shall:

24 1. Be the administrative head of the department.

25 2. Subject to the merit system rules, appoint, suspend, demote,
26 promote or dismiss all other classified employees of the department upon the
27 recommendation of their respective division superintendent. The director
28 shall determine and furnish the law enforcement merit system council
29 established by section 41-1830.11 with a table of organization. The
30 superintendent of each division shall serve at the concurrent pleasure of the
31 director and the governor.

32 3. Make rules necessary for the operation of the department.

33 4. Annually submit a report of the work of the department to the
34 governor and the legislature, or more often if requested by the governor or
35 the legislature.

36 5. Appoint a deputy director with the approval of the governor.

37 6. Adopt an official seal which shall contain the words "department
38 of public safety" encircling the seal of this state as part of its design.

39 7. Investigate, on receipt, credible evidence that a licensee or
40 registrant has been arrested for, charged with or convicted of an offense
41 that would preclude the person from holding a license, provisional
42 certificate or registration certificate issued pursuant to title 32, chapter
43 26.

1 8. Cooperate with the Arizona-Mexico commission in the governor's
2 office and with researchers at universities in this state to collect data and
3 conduct projects in the United States and Mexico on issues that are within
4 the scope of the department's duties and that relate to quality of life,
5 trade and economic development in this state in a manner that will help the
6 Arizona-Mexico commission to assess and enhance the economic competitiveness
7 of this state and of the Arizona-Mexico region.

8 9. ADOPT AND ADMINISTER THE BREATH, BLOOD OR OTHER BODILY SUBSTANCES
9 TEST RULES PURSUANT TO TITLE 28, CHAPTER 4.

10 10. DEVELOP PROCEDURES TO EXCHANGE INFORMATION WITH THE DEPARTMENT OF
11 TRANSPORTATION FOR ANY PURPOSE RELATED TO SECTIONS 28-1324, 28-1325, 28-1326,
12 28-1462 AND 28-3318.

13 B. The director may:

14 1. Issue commissions to officers of the department.

15 2. Request the cooperation of the utilities, communication media and
16 public and private agencies and any sheriff or other peace officer in any
17 county or municipality, within the limits of their respective jurisdictions
18 when necessary, to aid and assist in the performance of any duty imposed by
19 this chapter.

20 3. Cooperate with any public or private agency or person to receive
21 or give necessary assistance and may contract for such assistance subject to
22 legislative appropriation controls.

23 4. Utilize the advice of the board and cooperate with sheriffs, local
24 police and peace officers within the state for the prevention and discovery
25 of crimes, the apprehension of criminals and the promotion of public safety.

26 5. Acquire in the name of the state, either in fee or lesser estate
27 or interest, any real or personal property which the director considers
28 necessary for the department's use, by purchase, donation, dedication,
29 exchange or other lawful means. All acquisitions of personal property
30 pursuant to this paragraph shall be made as prescribed in chapter 23 of this
31 title unless otherwise provided by law.

32 6. Dispose of any property, real or personal, or any right, title or
33 interest therein, when the director determines that such property is no
34 longer needed or necessary for the department's use. Disposition of personal
35 property shall be as prescribed in chapter 23 of this title. The real
36 property shall be sold by public auction or competitive bidding after notice
37 published in a daily newspaper of general circulation, not less than three
38 times, two weeks prior to the sale and subject to the approval of the
39 director of the department of administration. When real property is sold,
40 it shall not be sold for less than the appraised value as established by a
41 competent real estate appraiser. Any funds derived from the disposal of real
42 or personal property shall be deposited in the Arizona highway patrol fund
43 as authorized by section 41-1752, subsection B, paragraph 6.

1 7. Sell, lend or lease personal property directly to any state, county
2 or local law enforcement agency. Such personal property may be sold or
3 leased at a predetermined price without competitive bidding. Any state,
4 county or local law enforcement agency receiving such property may not resell
5 or lease such property to any person or organization except for educational
6 purposes.

7 8. Dispose of surplus property by transferring such property to the
8 department of administration for disposition to another state budget unit or
9 political subdivision if such state budget unit or political subdivision is
10 not a law enforcement agency.

11 9. Lease or rent personal property directly to any state law
12 enforcement officer for the purpose of traffic safety, traffic control or
13 other law enforcement related activity.

14 10. Sell for one dollar, without public bidding, the department issued
15 handgun or shotgun to a department officer on duty related retirement
16 pursuant to title 38, chapter 5, article 4. Any funds derived from the sale
17 of the handgun or shotgun to the retiring department officer shall be
18 deposited, PURSUANT TO SECTIONS 35-146 AND 35-147, in the Arizona highway
19 patrol fund as authorized by section 41-1752, subsection B, paragraph 6.

20 11. Conduct state criminal history records checks for the purpose of
21 updating and verifying the status of current licensees or registrants who
22 have a license or certificate issued pursuant to title 32, chapter 26. The
23 director shall investigate, upon receipt, credible evidence that a licensee
24 or registrant has been arrested for, charged with or convicted of an offense
25 that would preclude the person from holding a provisional license or
26 registration certificate issued pursuant to title 32, chapter 26.

27 12. Grant a maximum of two thousand eighty hours of industrial injury
28 leave to any sworn department employee who is injured in the course of the
29 employee's duty and whose work-related injury prevents the employee from
30 performing the normal duties of that employee's classification. This
31 industrial injury leave is in addition to any vacation or sick leave earned
32 or granted to the employee and does not affect the employee's eligibility for
33 any other benefits, including workers' compensation. On retirement or
34 separation from the department or on reclassification to civilian status, the
35 employee forfeits any unused industrial injury leave and is not eligible for
36 payment pursuant to section 38-615. Subject to approval by the law
37 enforcement merit system council, the director shall adopt rules and
38 procedures regarding industrial injury leave hours granted pursuant to this
39 paragraph.

40 C. The director and any employees of the department which the director
41 designates in writing may use the seal adopted pursuant to subsection A,
42 paragraph 6 of this section to fully authenticate any department records and
43 copies of these records. These authenticated records or authenticated copies
44 of records shall be judicially noticed and shall be received in evidence by
45 the courts of this state without any further proof of their authenticity.

1 Sec. 10. Rules

2 Rules that relate to the regulation of breath tests and blood alcohol
3 concentration and that were adopted by the department of health services
4 continue in effect and shall be administered and enforced by the department
5 of public safety from the effective date of this act until superseded by
6 rules adopted by the department of public safety.

7 Sec. 11. Permits

8 Permits that relate to the operation of a breath testing device that
9 were issued by the department of health services continue in effect until
10 revoked.

APPROVED BY THE GOVERNOR MAY 14, 2003.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 15, 2003.

Passed the House January 28, 2003

by the following vote: 53 Ayes,

0 Nays, 6 Not Voting
1 Vacancy

[Signature]
Speaker of the House
Pro Tempore

[Signature]
Chief Clerk of the House

Passed the Senate April 1, 2003

by the following vote: 27 Ayes,

2 Nays, 1 Not Voting

[Signature]
President of the Senate

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

H.B. 2002

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

HOUSE FINAL PASSAGE
as per Joint Conference

Passed the House April 30, 2003,

by the following vote: 56 Ayes,

0 Nays, 4 Not Voting

Jake Elak
Speaker of the House

Norman L. Fyore
Chief Clerk of the House

SENATE FINAL PASSAGE
as per Joint Conference

Passed the Senate May 7, 2003

by the following vote: 28 Ayes,

1 Nays, 1 Not Voting

Ken Bennett
President of the Senate

Chaimon Ballington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor

this 8 day of May, 2003,

at 1:40 o'clock P M.

Sandra Han
Secretary to the Governor

Approved this 14 day of

May, 2003,

at 4:00 o'clock P M.

Jan Brewer
Governor of Arizona

H.B. 2002

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 15 day of May, 2003,

at 1:55 o'clock P M.

Jan Brewer
Secretary of State